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REPORT OF THE SELECT COMMITTEE

ON

THE KERALA MATERNITY BENEFIT BILL

AND

THE BILL AS REPORTED BY THE COMMITTEE

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THE KERALA MATERNITY BENEFIT BILL, 1957.

(*Report of the Select Committee*)

The Select Committee to which the Kerala Maternity Benefit Bill was referred, have considered the Bill clause by clause and now submit this, their report with the Bill as reported by the Committee annexed thereto.

2. The Bill was published in the Gazette Extraordinary dated the 16th August 1957.

3. The Bill was introduced in the Legislative Assembly on the 22nd August 1957 and the motion for reference to a Select Committee was adopted on the same day.

4. *Clause 1.* The Committee consider that the definition of worker may be so modified as to take in employees working under a contractor in cases where such contracts are in the course of or for the purposes of the trade or business of the employer. The Committee also consider that the limit of emoluments specified in the clause may be raised to Rs. Three hundred from Rs. Two hundred. The clause has been modified suitably.

5. *Clause 4.* The Committee consider that it should be made clear that in calculating the maternity benefit on the basis of the average daily wage, the average should not be struck taking into account the days on which she did not earn wages in that week. This clause and clauses 6 and 7 have been modified suitably.

6. *Clause 6.* The Committee is of the view that premature delivery or abortion within a period of six months of pregnancy should alone be deemed to be miscarriage. An explanation to this clause has therefore been newly added.

7. *Clause 8.* Under the original clause a woman will be entitled to medical bonus only in cases where no prenatal confinement and postnatal care are not provided for. The Committee consider that in the absence of provision for any of these, a woman should be entitled to medical bonus. The word 'and' has accordingly been substituted by the word 'or'.

8. *Clause 10.* The Committee is of the opinion that the right of a woman for maternity benefit under sub-clause (2) of this clause should not be made subject to the satisfaction of the Inspector that her dismissal was without sufficient cause. The sub-clause has been modified accordingly.

9. *Clause 11.* The Committee consider that an appeal from the orders of the Inspector to the Labour Commissioner should be provided for and that the amounts due towards maternity benefits should be recoverable as arrears of Land Revenue. Sub-clauses (3) and (4) to this clause have accordingly been newly added.

10. The other amendments made by the Committee are only either verbal or consequential.

T. V. THOMAS,
Chairman of the Select Committee.

THE KERALA MATERNITY BENEFIT BILL.

(*As reported by the Select Committee.*)

A

BILL

to prevent the employment of women in factories, plantations and other establishments for some time before and some time after confinement and to provide for payment of maternity benefit and medical benefit to them.

Preamble.—WHEREAS it is expedient to prevent the employment of women in factories, plantations or other establishments for some time before and some time after confinement and to provide for the payment of maternity benefit and medical benefit to them;

BE it enacted in the Eighth year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Maternity Benefit Act, 1957.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

(4) It shall apply, in the first instance to all factories and plantations.

(5) The Government may after giving one month's notice of their intention of so doing by notification in the Gazette extend the provisions of this Act to any other establishment or class of establishments, industrial, commercial or otherwise wherein fifty or more persons are employed or were employed on any day of the preceding twelve months.

2. *Definitions.*— In this Act, unless there is anything repugnant in the subject or context—

(*a*) "employer" includes the occupier and the manager of a plantation or a factory or an establishment;

(*b*) "establishment" means an establishment to which the provisions of this Act have been extended under section 1, sub-section (5);

(*c*) "Certifying Surgeon" means a qualified medical Practitioner appointed as such for purposes of this Act;

(*d*) "factory" means a factory as defined in the Factories Act, 1948;

(*e*) "Inspector" means an Inspector appointed under section 13;

(*f*) "worker" in relation to a factory has the same meaning assigned to it by the Factories Act, 1948, and in relation to a plantation or in relation to any other establishment means a person employed directly or through an agency whether for hire or not, to do any work, skilled or unskilled, manual or clerical or any person so employed under a contractor engaged

in the execution of the whole or any part of any work which is ordinarily part of the trade or business of the employer, but does not include a person whose total emoluments exceed three hundred rupees per mensem or any member of the managerial staff, that is to say, the Manager, Assistant Manager, or other Agent of the employer;

(*g*) "plantation" means any estate which is maintained for the purpose of growing cinchona, rubber, coffee, tea or cardamom, and (i) which is fifty acres or more in extent; or

(ii) in which fifty or more persons are employed or were employed on any day of the preceding twelve months for that purpose;

(*h*) "maternity benefit" means the amount of money payable under the provisions of this Act to a woman employed in a plantation or a factory or an establishment;

(*i*) "prescribed" means prescribed by rules made under this Act; and

(*j*) "woman" means a woman worker.

3. *Prohibition of employment of women in certain period.*— (1) After this Act comes into operation no employer shall employ a woman in any factory, plantation or other establishment after she has given notice under sub-section (1) of section 5 or knowingly employ any woman in any such factory, plantation or other establishment during the 8 weeks immediately following the day of her confinement.

(2) During the period of pregnancy a woman shall not be employed on work which is arduous or which requires long hours of standing at one place or which may in any way interfere with her pregnancy and is likely to cause miscarriage or adversely affect her health or interfere with the normal development of foetus.

4. *Right to maternity benefit of women in factories, plantations and other establishments.*— (1) Subject to provisions of this Act, every woman in a factory, a plantation or an establishment shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of five rupees and twentyfive naye paise a week or calculated at a rate of 7/12 of the average daily wage multiplied by seven for a week, whichever is higher, during the period of her actual absence immediately preceding and including the day of her confinement and for the eight weeks immediately following her confinement.

Explanation.— For the purpose of this section and sections 6 and 7, "Average daily wage" means average of her total full-time earnings for the days on which she worked during the month immediately preceding the date on which she gives notice under sub-section (1) of section 5:

Provided that a woman shall not be entitled to maternity benefit unless she has been employed in the factory or plantation or an establishment of the employer from whom she claims

maternity benefit for atleast one hundred and fifty days whether continuously or intermittantly during the period of twelve months immediately preceding the date on which she gives notice under sub-section (1) of section 5.

(2) Notwithstanding anything contained in sub-section (1), if at or before the commencement of this Act, an employer has been paying to women workers in any factory or plantation or in any other establishment, maternity benefit at a rate higher than that payable under sub-section (1), then every woman worker in such factory or plantation or an establishment shall be entitled to and the employer shall be liable for the payment of maternity benefit at such higher rate.

(3) The maximum period for which any woman shall be entitled to the payment of maternity benefit shall be twelve weeks, that is to say, four weeks up to and including the day of her confinement and eight weeks immediately following that day.

5. *Notice of claim of maternity benefit and payment thereof.*—(1) Any woman in a factory or plantation or in an establishment entitled to maternity benefit under the provisions of this Act may give notice in writing to her employer stating that her maternity benefit may be paid to her or to such other person as she may nominate in this behalf and that she will not work in any employment during the period for which she receives maternity benefit. If the woman has not been confined such notice shall state that she expects to be confined within four weeks from the date of the notice; if she has been confined, such notice shall be given within one week of her confinement.

(2) The employer shall on receipt of the notice permit such woman to absent herself from the factory or plantation or establishment until the expiry of eight weeks after the date of her confinement.

(3) The amount of maternity benefit for the period up to and including the day of confinement shall be paid by the employer to the woman within forty-eight hours of the production of such proof, as the Government may by rules prescribe, that the woman has been confined. The amount due for the subsequent period shall be paid punctually each week in arrear.

6. *Leave for miscarriage.*—In case of miscarriage, a woman shall on production of a certificate signed by the Certifying Surgeon or any other qualified medical practitioner or on production of such other proof of miscarriage as may be prescribed be entitled to three weeks leave from the date of her miscarriage with wages at the rate of five rupees and twentyfive naye paise a week or calculated at the rate of 7/12 of the average daily wage multiplied by seven for a week, whichever is higher, during the period of her absence.

Explanation:—For the purpose of this clause any premature delivery or abortion within a period of six months of pregnancy shall be alone deemed to be miscarriage.

7. *Leave for illness arising out of pregnancy or confinement.*—(1) A woman shall be entitled to leave with wages for a maximum period not exceeding thirty days in cases of illness arising out of pregnancy or confinement in addition to the maternity leave to which she is entitled to under section 4 at the rate of five rupees and twentyfive naye paise a week or calculated at the rate of 7/12 of the average daily wage multiplied by seven for a week, whichever is higher on production of such proof as may be prescribed.

8. *Payment of medical bonus.*—Every woman entitled to maternity benefit under section 4 shall also be entitled to receive from her employer a medical bonus of ten rupees if no prenatal confinement or postnatal care is provided for by the employer free of charge, on production of such proof, as may be prescribed.

9. *Payment of maternity benefit in case of claimant's death.*—If a woman entitled to maternity benefit under the provisions of this Act dies during the period for which she is entitled to maternity benefit the employer shall pay the amount of maternity benefit due to the person who undertakes the care of the child, if the child is living, and if the child is not living, to the nominee mentioned in the notice given under sub-section (1) of section 5, and if there is no such nominee, to the heirs of the deceased woman.

10. *Dismissal during pregnancy or absence.*—(1) When a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to dismiss her during or on account of such absence, or to give notice of dismissal on such a day that the notice will expire during such absence.

(2) The dismissal of a woman at any time during her pregnancy if the woman but for such dismissal would have been entitled to maternity benefit under this Act shall not have the effect of depriving her of that maternity benefit.......

(3) If the confinement involves illness incapacitating a woman for work the employer shall not be entitled to dismiss her if she fails to return to duty on the expiry of eight weeks after her confinement, in addition to the leave provided for in section 7, without getting the approval of a Certifying Surgeon who may increase the period of absence if he considers fit.

11. *Power of Inspector to direct payments to be made.*—(1) Any woman claiming that maternity benefit to which she is entitled under this Act and any person claiming that a payment due under section 9 is improperly withheld may make a complaint to the Inspector.

(2) On receipt of such complaint or on his own motion without any such complaint being made, the Inspector may make inquiry or cause an inquiry to be made, and if satisfied that a payment has been wrongfully withheld may direct the payment to be made in accordance with his orders.

(3) Any person aggrieved by the order of the Inspector under sub-section (2) may appeal to the Labour Commissioner or such other officer as may be empowered by the Government in this behalf within such time and in such manner as may be prescribed.

(4) Any amount payable under this section shall be recoverable as arrears of land revenue under the Revenue Recovery Act for the time being in force.

12. *Forfeiture of maternity benefit.*—If a woman works in any factory or plantation or establishment after she has been permitted by her employer to absent herself under the provisions of section 5, she shall forfeit her claim to the payment of the maternity benefit to which she is entitled.

13. *Nursing Breaks.*—Every woman in a factory or plantation or in an establishment who returns to duty after confinement shall be allowed in the course of her daily work two intervals of sufficient time to feed the child till the child attains the age of two.

14. *Appointment of Inspectors.*—The Government may by notification in the Gazette appoint such officers of the Government as they think fit to be Inspectors for the purposes of this Act and may assign to them such local limits as they think fit.

15. *Powers and duties of Inspectors.*—Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed, enter any place which is used, or which he has reason to believe is used, as a factory or a plantation or an establishment with such assistants as he thinks fit and inspect the premises and such registers, records and notices as may be prescribed.

16. *Inspectors to be Public Servants.*—Every Inspector shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

17. *Penalty for contravention of Act by Employer.*—If any employer contravenes any of the provisions of this Act, he shall be punishable with fine which may extend to two hundred and fifty rupees and where the contravention is of the provision relating to the payment of maternity benefit, and where the amount has not been already recovered the court shall recover the amount due on account of maternity benefit as if it were a fine and pay such amount to the person entitled thereto.

18. *Jurisdiction of Courts.*—(1) No Court inferior to that of a Magistrate of the First Class shall try any offence against this Act or any rules thereunder.

(2) No prosecution for any offence against this Act or any rules thereunder shall be instituted except by or with the previous sanction of the Inspector.

19. *Period of limitation for prosecution under Act.*—No Court shall take cognisance of, or convict a person for, any offence against this Act or any rule thereunder unless complaint thereof has been made within six months of the date on which the offence was committed. In computing the period of six months aforesaid, the time, if any, taken for the purpose of obtaining the previous sanction of the Inspector under sub-section (1) of Section 18 shall be excluded.

20. *Rules.*—(1) The Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the preparation and maintenance of a muster roll and the particulars to be entered in such roll;

(b) the inspection of factories, plantations and other establishments for the purposes of this Act by Inspectors,

(c) the exercise of powers and the performance of duties by Inspectors for the purposes of this Act,

(d) the method of payment of maternity benefit and other benefits under this Act in so far as provision has not been made therefor in this Act;

(e) the nature of proof under sub-section (3) of section 5 and sections 7 and 8, and

(f) all matters which are to be or may be prescribed.

(3) Any such rule may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(4) The making of rules under this section shall be subject to the condition of previous publication.

21. *A copy of Act and Rules to be exhibited in Factories, Plantations and other establishments employing women.*—A copy of the provisions of this Act and Rules thereunder in the local language shall be exhibited in a conspicuous place by the employer in every factory, plantation and establishment in which women are employed.

22. *Repeal.*—The Travancore-Cochin Maternity Benefit Act (Act XX of 1952) and the Madras Maternity Benefit Act, 1934 (Act VI of 1935) in its application to the Malabar District referred to under sub-section (2) of section 5 of the States Reorganisation Act, 1956 are hereby repealed.

V. KRISHNAMOORTHI,

Secretary,

Legislative Assembly.